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Supreme Court of the United States

OCTOBER TERM, 1962

No. 77

JAMES RICHARD PETERSON, YVONNE JOAN EDDY, HELEN ANGELA EVANS, DAVID RALPH STRAWDER, HAROLD JAMES FOWLER, FRANK G. SMITH, ROBERT CROCKETT, JAMES CARTER, DORIS DELORES WRIGHT AND ROSE MARIE COLLINS, PETITIONERS,

versus

CITY OF GREENVILLE, RESPONDENT

BRIEF OF THE RESPONDENT, CITY OF GREENVILLE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1961

No. 750

JAMES RICHARD PETERSON, YVONNE JOAN EDDY, HELEN ANGELA EVANS, DAVID RALPH STRAWDER, HAROLD JAMES FOWLER, FRANK G. SMITH, ROBERT CROCKETT, JAMES CARTER, DORIS DELORES WRIGHT AND ROSE MARIE COLLINS, PETITIONERS,

versus

CITY OF GREENVILLE, RESPONDENT

BRIEF OF THE RESPONDENT, CITY OF GREENVILLE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

The petitioners invoke the jurisdiction of the Supreme Court of the United States pursuant to Title 28 U. S. Code, Section 1257 (3), upon the ground of deprivation of rights, privileges and immunities claimed by them under the Constitution of the United States. The respondent, City of Greenville, objects to the jurisdiction of this Court on the ground that no substantial Federal question was presented at any stage of the proceedings below and upon the ground that the issues below involved property rights only and the petitioners were not deprived of any rights, privileges or immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED

The respondent, City of Greenville, denies that the petitioners have been deprived of any rights secured to them by the United States Constitution. However, for the purpose of argument, the respondent will assume that the questions to be considered are those presented by the petitioners as modified below.

The respondent, subject to its reservations, submits that the questions presented are as follows:

Whether Negro petitioners were denied due process of law and equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States:

1. When arrested and convicted of trespass for refusing to leave a department store lunch counter after demand was made for them to depart by the manager of the store.

2. Whether petitioners, as "sit-in" demonstrators, were denied their First Amendment freedom of speech right as secured by the Fourteenth Amendment when (a) convicted of trespass upon refusal to move from a lunch counter which was reserved for the use of white persons and (b) when the convictions rest on a statute which does not specifically require proof that petitioners were requested to leave by a person who had established his authority to issue such request at the time of making the request.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Constitutional and statutory provisions cited by the petitioners on page 3 of the Petition this case involves the First Amendment to the Constitution of the United States.

RESPONDENT'S STATEMENT OF THE CASE

The petitioners were each tried and convicted in the Recorder's Court of the City of Greenville, South Carolina. They were charged with violating Act No. 743 of the 1960 South Carolina General Assembly, R 896, H 2135, now Section 16-388, Code of Laws of South Carolina, 1952. The statute, in pertinent part, provides that: "Any person: * * * (2) who, having entered into the dwelling house, place of business or on the premises of another person without having been warned within six months not to do so, and fails and refuses without good cause or excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative, shall, on conviction, be fined not more than one hundred dollars, or be imprisoned for not more than thirty days." This Act was approved by the Governor on the 16th day of May, 1960 and took effect 30 days later, or the 15th day of June, 1960. On August 9, 1960 at approximately 11:00 A. M. the petitioners entered the S. H. Kress & Company department store in the City of Greenville and took seats at the lunch counter in that store (R. 5). Only one of the petitioners testified as to placing any order for service (R. 41). Four of the petitioners had no money at all in their possession (R. 7, 8) and the one who did place an order refused to state that any of the others had placed an order (R. 46). It is apparent that the real purpose of the petitioners in being in the Kress store was to put pressure on the manager by way of a demonstration (R. 43). One of the Petitioners testified that this was only one of several demonstrations in the same store and lunch counter (R. 44). There is no evidence that any of the petitioners had previously been served at this particular lunch counter on any occasion. The only reasonable inference is that on the occasion of the prior demonstrations service had been refused them.

On the date of the commission of the offenses herein complained of the petitioners seated themselves at a lunch counter which had space for fifty-nine persons. The petitioners were advised that Negroes were not served at that counter (R. 41). The lights were extinguished and G. W. West, the manager of the store, requested that everyone leave (R. 19). All the white people who had been present left pursuant to this request, leaving behind the petitioners herein (R. 20). The petitioners did not leave and after a wait of approximately five minutes (R. 20), they were arrested and charged with violation of the trespass after notice statute which has been referred to. Their convictions subsequently were reviewed by the Supreme Court of South Carolina and from the decision of that Court sustaining the convictions, they petition this Court for a Writ of Certiorari.

ARGUMENT

I

The Petitioners were not deprived of the due process of law and equal protection of the laws secured to them by the Fourteenth Amendment in their trial and conviction for trespass.

The real issue in this case is whether or not a landowner has a right by virtue of his property ownership to say who may and who may not come upon or remain upon his premises. We reach the question left open in *Garner v. Louisiana*, 368 U. S. 157, 164 and footnote 11, the question "whether or not a private property owner and proprietor of a private establishment has the right to serve only those whom he chooses and to refuse to serve those whom he desires not to serve for whatever reason he may determine."

The S. H. Kress & Company operates a variety or junior department store in the City of Greenville. In the

building housing the store there have been set up some fifteen to twenty departments, including a lunch counter. In these departments are sold approximately ten thousand items (R. 21, 22). The decision as to what items are to be offered for sale is the result of a business judgment, made by a trained and experienced management. These decisions are made with the calculated business purpose in view of earning a profit. Some items sold are offered because there is an existing demand for them. As to other items the management seeks to create a demand by display and advertising. It has no monopoly and no one is required to buy anything from it. Nor is S. H. Kress & Company a public utility. It was not required to obtain a certificate of public convenience before opening the doors of its store in Greenville. It requires the consent of no one if it desires to close its doors and move away. The only license it is dependent upon is the continued good will of the buying public. No one can complain if its clerks are obnoxious, or if it refuses to sell certain items or insists on selling certain others.

Likewise, a private business such as the S. H. Kress & Company may regulate its opening and closing hours for daily business. Whether as lessee or as owner in fee simple, the private proprietor has the right to exclude everyone when the store is closed. His dominion over the premises is absolute.

Thus it will be seen that the proprietor has two rights in the situation presented in the case at bar. He has the right to do business with whom he pleases, and he has the right to control and possession of the premises whereon he conducts his business.

The right to select business clients.

The necessary parties to any private business selling transaction are a willing buyer and a willing seller. If one of the parties is unwilling, no measure of willingness on

the other side can make up the deficiency and force the sale. No law compels either party to go through with the transaction. The general rule of the common law, which is in effect in South Carolina, is that properietors of private enterprises are under no obligation to serve without discrimination all who seek service, but on the contrary enjoy an absolute power to serve whom they please. This was expressly held below to be the law of South Carolina, there being no statute to the contrary. (Petitioners' appendix, 9a.) The right of a proprietor, other than an innkeeper or common carrier, to do business with whom he pleases, and to refuse to do business with others, for any reason, or for no reason at all, has been consistently and uniformly held by the courts of this country, in the absence of legislation to the contrary. Annotation, 1 A. L. R. (2d) 1165. The refusal of a proprietor to do business with any prospective customer can be based on the rankest of discrimination, either of race, color or creed, or on some whim unreasonable or even fanciful. As was said in *State v. Clyburn*, 247 N. C. 455, 101 S. E. (2d) 295:

> "The right of an operator of a private enterprise to select the clientile he will serve and to make such selection based on color, if he so desires, has been repeatedly recognized by the appellate courts of this nation. *Madden v. Queens County Jóckey Club*, 269 N. Y. 249, 72 N. E. (2d) 697, 1 A. L. R. (2d) 1160; *Terrell Wells Swimming Pool v. Rodriguez*, Tex. Civ. App. 182 S. W. (2d) 824; *Booker v. Grand Rapids Medical College*, 156 Mich. 95, 120 N. W. 589, 24 L. R. A., NS 447; *Younger v. Judah*, 111 Mo. 303, 19 S. W. 1109, 16 L. R. A. 558; *Goff v. Savage*, 122 Wash 194, 210 P. 374; *DeLaYsla v. Publix Theatres Corporation*, 82 Utah 598, 26 P. (2d) 818; *Brown v. Meyer Sanitary Milk Co.*, 150 Kan. 931, 96 P. (2d) 651; *Horn v. Illinois Cent. R. Co.*, 327 Ill. App. 498, 64 N. E. (2d) 574; *Coleman v. Middlestaff*, 147 Cal. App. (2d) Supp. 833, 305 P. (2d) 1020; *Fletcher v. Coney Island*, 100 Ohio App.

259, 136 N. E. (2d) 344; *Alpaugh v. Wolverton*, 184 Va. 943, 36 S. E. (2d) 906."

Mr. Justice Holmes recognized the principle in *Terminal Taxicab Co. v. Kutz*, 241 U. S. 252, 256, where he said:

> "It is true that all business, and for the matter of that, every life in all its details, has a public aspect, some bearing on the welfare of the community in which it is passed. But, however it may have been in earlier days as to the common callings, it is assumed in our time that an invitation to the public to buy does not necessarily entail an obligation to sell. It is assumed that an ordinary shopkeeper may refuse his wares arbitrarily to a customer whom he dislikes * * *."

The refusal of a restaurateur to serve a prospective patron because of his color has been held in several recent decisions to deprive a Negro of none of the rights, privileges or immunities secured to a citizen by the Constitution of the United States, and protected from the infringement by the Civil Rights Act, Title 42, United States Code, Section 1983. *Williams v. Howard Johnson's Restaurant*, 268 F. (2d) 845 (4th Cir.); *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124 (D. C. Md.), affd., 284 F. (2d) 746 (4th Cir.). In the *Williams v. Howard Johnson's case* the Fourth Circuit Court held there was a distinction between activities that are required by the state and those which are carried out by voluntary choice and without compulsion by the people of a state in accordance with their own desires and social practices. The latter, it was held, deprived no one of any civil rights. That permissible area of voluntary selection of customers is what is presented by the facts of the instant case. The manager of the store testified that the practice of serving only white persons was in conformity with a policy of the company to follow local customs. The policy was made at the company's head-

quarters, and was obviously dictated by business reasons. (R. 22, 23, 25.) [1]

Since the manager of Kress' store was acting for it enforcing its voluntarily imposed policy, he had an absolute right to refuse to serve the petitioners herein.

Indeed, in the *Civil Rights Cases*, 109 U. S. 3, this Court held unconstitutional the section of the Civil Rights Act of 1875 providing that all persons within the jurisdiction of the United States should be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, theaters, and other places of public amusement, with penalty for one who denied same to a citizen. One of the vices in the statute was that it laid down rules for the conduct of individuals in society towards each other, and imposed sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the state or its authorities. The person supposedly injured, it was said, would be left to his state remedy. And in the instant case, as we have stated, the common law is in effect and gives no right to the petitioners or anyone else to be served without the consent of the restaurateur or proprietor of a business.

The Court has continued to recognize that individuals have the right in their purely private day to day dealings to associate and discriminate as they see fit, for whatever reason is to their own minds satisfactory. The court specifically stated in *Shelley v. Kraemer*, 334 U. S. 1:

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[1] It is equally clear that the ordinance of the City of Greenville requiring segregation in eating places (R. 56, 57) had no bearing on the instant case. The validity of this ordinance has never been tested. It is clear, however, that if it is unconstitutional, any action taken pursuant to its mandate would be personal, and taken at the risk of personal liability on the part of the person so acting. *Gross v. Rice*, 71 Maine 241; *Sumner v. Beeler*, 50 Ind. 341; *Meyers v. Anderson*, 238 U. S. 368. The police captain who made the arrests testified he did not have the ordinance in mind (R. 10); in fact he was of the opinion it had been superseded (R. 17), and was not then in effect.

> "Since the decision of this Court in the Civil Rights cases, . . . the principle has become embedded in our constitutional law that the action inhibited by the first section of the Fourteenth amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."

Similarly, in *Boynton v. Virginia*, 364 U. S. 454, this Court held that a bus station restaurant was required to serve all who sought service without discrimination, under the Interstate Commerce Act, where the restaurant was an integral part of a bus company's interstate transportation service. The Court made this reservation:

> "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that act."

The instant case falls squarely within the reservation. The S. H. Kress & Company in Greenville, South Carolina, provides only a local restaurant service. Its facilities are not connected to or with any business affected with a public interest. As a purely private business venture, it is and was legally entitled to refuse service to the petitioners herein.

The right to exclusive possession of business premises.

Ownership of real estate, whether a fee simple, a life estate, or a term for years is basically a right to its possession. From the right of possession follows the right of the owner to make whatever use of the premises that suits his fancy. Anyone who enters without his permission is a trespasser. The civil action for damages for trespass **quare clausum fregit** is founded on plaintiff's possession, and it is for injury to that possession that damages are awarded. *Grimke v. Brandon*, 1 Nott & McCord 356 (10 S. C. Law); *Lyles v. Fellers*, 138 S. C. 31, 136 S. E. 18.

It has always been the law that a person in possession is entitled to maintain that possession, even by force if necessary.

> "A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the explusion." *State v. Bradley,* 126 S. C. 528, 120 S. E. 248.

Of course, away from the dwelling, the right to kill in ejecting a trespasser does not exist. Still, it is the law of South Carolina that any person in the rightful possession of land may approach any person wrongfully thereon, and order him to leave or quit the land, and in the event of a refusal to do so, may use such force as may be necessary to eject such trespasser. *State v. Bodie,* 33 S. C. 117, 11 S. E. 624; *State v. Williams,* 76 S. C. 135, 56 S. E. 783; *Shramek v. Walker,* 152 S. C. 88, 149 S. E. 331. In ejecting such trespassers gentle force must be used, *State v. Brooks,* 79 S. C. 144, 60 S. E. 518.

The policy of the law does not favor the use of force and firearms by persons in possession of land who seek to remove trespassers. The charge in *State v. Lightsey,* 43 S. C. 114, 20 S. E. 975 expresses it thus:

> "But I charge you a man has no right to take his gun and run a man off his place. That is simply taking the law into his own hands."

As a substitute for the strong armed ejectment by the person in possession, the law of this state has for many years provided a calm judicial mode of ejectment, employing the more even temperaments of impartial law enforcement officers and judges. Thus the law has provided for many years that malicious injury to real property should

be a misdemeanor. Code of Laws of South Carolina, 1952, Section 16-382. Since 1866 our State has made entry on lands of another after notice prohibiting such entry a misdemeanor. Code of Laws of South Carolina, 1952, Section 16-386. It has never been suggested that these laws were intended other than for the protection and preservation of property rights. The opinions of our Court in South Carolina have strongly intimated that a person in possession of property should not take the law in his own hands in removing trespassers, but on the contrary they are exhorted to seek the aid and protection of the courts, by prosecuting the trespasser for these misdemeanors. *State v. Lightsey, supra.*

It may be objected that the statutory law of South Carolina until 1960 provided only for prosecutions for entry after notice. But the court in *State v. Bradley, supra,* indicated otherwise. There, quoting *State v. Lightsey, supra,* the court said that if a man warns another off his place, and that man comes on it, or refuses to leave, he is guilty of a crime, a misdemeanor, and for that misdemeanor he may be tried in court. The 1960 Act, under which petitioners were tried and convicted, adds nothing to the substance of the existing law. It merely clarifies and provides expressly for the misdemeanor of trespass by one who refuses to leave on being requested to do so. It made positive what the court had held in *State v. Bradley, supra,* was impliedly a part of the law prohibiting entry after notice.

With respect to country and farm lands, no one may enter them without permission. With respect to a store building, or business premises, the proprietor or operator expects and invites prospective customers to enter. This is a sort of permission which renders the original entry rightful and not a trespass. Business invitees are often spoken of as licensees, license being nothing more than a mere grant of permission. Ordinarily it is implied from

the opening of the doors of a business establishment. Such a license is always revocable, and when revoked the licensee becomes a trespasser if he does not immediately depart. In the annotation, 9 A. L. R. 379, it is put as follows:

> "It seems to be well settled that although the general public have an implied license to enter a retail store, the proprietor is at liberty to revoke this license at any time as to any individual, and to eject such individual from the store if he refuses to leave when requested to do so."

In *Brookside-Pratt Mining Co. v. Booth*, 211 Ala. 268, 100 So. 240, the Court held that the proprietor of a store would not be liable for damages for assault and battery in ejecting a prospective patron from his store, when he did not desire to transact business with the person, and he had notified him to leave but was met with a refusal to do so, after giving him a reasonable time in which to depart.

The petitioners in this case found themselves in the identical situation. The manager of the store revoked their license or privilege to be there, and directed them to leave. (R. 19, 20.) After five minutes had passed, the petitioners still had not moved, although other persons originally present had departed when requested to leave. (R. 20.) At the end of that interval, the S. H. Kress & Company had a right to remove the petitioners by force. It is not contended that the petitioners were not given a reasonable time in which to depart, and the finding of the courts below on that element of the offense is conclusive. But our law does not favor persons in possession of property taking the law into their hands to eject trespassers. *State v. Bradley, supra; State v. Lightsey, supra.* The law made the conduct of the petitioners a misdemeanor. The law favors their removal by the forces of law and trial by the orderly processes of a court of justice.

The only purpose of the law in this case is to protect the rights of the owners or those in lawful control of private property. It protects the right of the person in possession to forbid entrance to those he is unwilling to receive and to exclude them if, having entered, he sees fit to command them to leave. *Hall v. Commonwealth*, 188 Va. 72, 49 S. E. (2d) 369, app. dismissed, 335 U. S. 875, Reh. den. 335 U. S. 912. As Mr. Justice Black said in *Martin v. City of Struthers*, 319 U. S. 141:

> "Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off."

Of course, the police officers had a right and a duty to arrest for the misdemeanor committed in their presence.

The petitioners contend that their arrest and trial by the city police and in the city court was state action which deprived them of Fourteenth Amendment rights. There is no inference that the law involved or the other trespass laws have been applied to Negroes as a class or to these petitioners to the exclusion of other offenders. Certainly they were not deprived of any rights in being removed from the Kress store, a place where they had no right to remain under the law, after being requested to leave. Granted the right of a proprietor to choose his customers and to eject trespassers, it can hardly be the law, as petitioners contend, that the proprietor may use such force as he and his employees possess, but may not call on a peace officer to protect his rights. *Griffin v. Collins*, 187 F. Supp. 149 (D. C. Md.); *Henderson v. Trailways Bus Company*, 194 F. Supp. 423 (E. D. Va.). A right which cannot be protected and enforced through the judicial machinery is a non-existent right.

In this there is no conflict with any prior decisions of this Court. The cases cited by petitioners all involve state

action on state owned or operated premises, state-furnished services, and common carriers. None of them involve purely private action taken in respect of property rights to private property. We submit that the only constitutional right involved in this case is the right of a property owner to the free and untrammelled use of his premises in whatever manner he sees fit.

II

The decision of Supreme Court of South Carolina is in accord with the decision of this Court securing the right of freedom of speech under the Fourteenth Amendment.

A. **The conviction of petitioners of trespass after their refusal to move from a lunch counter in a private store did not interfere with their freedom of speech.**

When the petitioners use the term "freedom of expression" we assume they have in mind freedom of speech, which is protected from abridgment by Congress by the First Amendment to the Constitution of the United States. Since 1925, the First Amendment freedom of speech has been regarded as an aspect of "liberty" which under the Fourteenth Amendment the States are prohibited from taking away without due process of law. *Gitlow v. New York,* 268 U. S. 652; *Fiske v. Kansas,* 274 U. S. 380.

Freedom to expound one's views and distribute information to every citizen wherever he desires to receive it is clearly vital to the preservation of a free society. *Martin v. Struthers,* 319 U. S. 141. This freedom gives the right to the person who would speak to try and convince others of the correctness of his ideas and opinions. The title to streets and parks has immemorially been held in trust for the use of the public, and time out of mind have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. The streets are natural and proper places for the dissemination of infor-

mation and opinion. *Schneider v. State*, 308 U. S. 147; *Hague v. C. I. O.*, 307 U. S. 496; *Thornhill v. Alabama*, 310 U. S. 88. Even where the streets and parks are privately owned, as in company towns, citizens have a right to go upon them to communicate information, unimpeded by trespass statutes. *Marsh v. Alabama*, 326 U. S. 501; *Tucker v. Texas*, 326 U. S. 517. Even freedom of speech on the public streets is subject to some control. *Saia v. New York*, 334 U. S. 558. In *Beauharnais v. Illinois*, 343 U. S. 250, this Court held that a person expressing his honest convictions on the streets could be prosecuted under a state group libel statute.

When we leave the streets, and consider the right to freedom of speech on private property, we find that the courts have unanimously held that the right of freedom of speech must yield to the property right of the landowner to eject trespassers. In *Hall v. Commonwealth*, 118 Va. 72, 49 S. E. (2d) 369; app. dism. 335 U. S. 875; reh. den. 335 U. S. 912, the conviction of a member of a religious sect for trespass under a statute similar to the one here was upheld. The right of the individual to freedom of speech had to yield, it was held, to the property rights of the owner of an apartment building and its tenants. There was no right for anyone, over their objection, to insist on using the inner hallways to distribute their views and information. The refusal of those persons to depart after being requested to do so, was held to justify their conviction for trespass. The court stated that inner hallways of apartment houses were not to be regarded in the same light as public roads; they emphatically do not constitute places of public assembly, or for communicating thoughts one to another, or for the discussion of public questions. The First Amendment has never been held to inhibit action by individuals in respect to their property. *Watchtower Bible & Tract Society v. Metropolitan Life Insurance Company*,

279 N. Y. 339, 79 N. E. (2d) 433; *Commonwealth v. Richardson*, 313 Mass. 632, 48 N. E. (2d) 678. The petitioners in this case had the right to express their opinions on the streets. They had the privilege to enter the Kress store in Greenville. But, when they refused to leave on being requested to do so, they no longer had a right to give vent to their thoughts on the premises of the Kress store. They cannot complaint of their conviction for trespass where they insisted on remaining in a place they had no right to be. They cannot be permitted to arm themselves with an acceptable principle, such as freedom of speech, and proceed to use it as an iron standard to smooth their path by crushing the rights of others to the possession of their property. *Breard v. Alexandria*, 341 U. S. 622.

The petitioners cite a number of labor relations and particularly picketing cases. Undoubtedly peaceful picketing may be carried out on the public streets and sidewalks. Picketers have the right to publicize their dispute under the First Amendment. What is protected in picketing is the liberty to discuss publicly and truthfully all matters of public concern. *Thornhill v. Alabama*, 310 U. S. 88. The important thing about picketing is that it is used to inform members of the public of the existing state of affairs. Its purpose is not to inform the employer; assumedly he knows of the dispute, and at least one side of the argument. In the instant case the petitioners were not attempting to pass on information to the public. They were attempting by demonstration and coercion to force a private person to make a use of his property not in accord with his desires. Here there was no gentle persuasion. Nor was the S. H. Kress & Company the proper object of their instruction. A private person cannot be forced, on his own property, to listen to the arguments of anyone, whether he agrees with the sentiments expressed or not. *Martin v. Struthers*, *supra*. Even the listener on the street can turn away. A

listener on his own land should not be required to retreat, he should be able to require the speaker to turn away, and prosecute him for trespass if he does not.

Peaceful picketing, even when conducted on the streets, is not absolutely protected by the First Amendment. Picketing cannot be used in connection with a conspiracy to restrain trade, to prevent union drivers from crossing picket lines. *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490. Nor is picketing lawful where it interferes with the free ingress and egress of customers into a place of business. *Teamsters Union v. Hanke*, 339 U. S. 470. The conduct of the petitioners in this case, if it can be analogized to picketing, was unlawful. They sought not to appeal to the reason of the public. They sought rather to obstruct the business of S. H. Kress & Company by squatting on its property and refusing to move. They sought to prevent its doing business with others unless it did business with them, by taking steps to effectively prevent the entrance of others. Their conduct clearly exceeded the bounds of freedom of speech and of peaceful picketing. They were properly arrested and convicted of trespassing.

B. The petitioners were not denied freedom of speech in being convicted under a trespass statute which does not expressly require proof that the person ordering them to leave establish his authority at the time of making the request.

The petitioners moved in the trial court for dismissal of the warrants on the ground they were indefinite and uncertain. The facts of the case show otherwise. They were arrested in the act of committing the offense charged, they refused the manager's request to leave after the lunch counter had been closed and the lights extinguished. There could have been no doubt in their minds as to what they were charged with. Warrants drawn such as the ones in the in-

stant case have been passed on before and held sufficient. In *State v. Hallback*, 40 S. C. 28, 18 S. E. 919, the warrant was held sufficiently certain which alleged "that Jerry Hallback did commit a trespass after notice." Of like effect is *State v. Tenney*, 58 S. C. 215, 36 S. E. 555. The petitioners' attorneys realized they were being charged with trespass. (R. 2.) And from the warrant they had a citation to the law, with particulars as to the date, time and place of the arrest. And it is noteworthy of comment that the petitioners did not make a motion to make the charge more definite and certain, which they had a right to do.

The petitioners claim that the statute is unconstitutional because it does not expressly require the landowner or person in possession to identify himself. The statute necessarily means that the person forbidding a person to remain in the premises of another shall be the person in possession, or his agent or representative, and that is an essential element of the offense to be proved by the State beyond a reasonable doubt. The manager of the store testified positively that he was the manager and that he requested the petitioners to leave. (R. 19.) The only one of the petitioners to testify at the trial knew Mr. West was the manager as she had spoken to him over the telephone before (R. 43), and she recognized him at the store at the time of the demonstration (R. 42, 47).

If the person ordering them out had no such authority, that would be a defense, to be proved in Court. But here the evidence supports the inference that the petitioners knew that the person who ordered them to leave had authority to do so. They did not question his authority. They did not so much as ask his name, so they could later investigate the extent of his authority. The petitioners knew they were not authorized and they could presume that anyone who undertook to exercise control over the premises was lawfully in control.

The cases cited by petitioners are not relevant here at all. They require **scienter** in cases involving matters of opinion based on value judgments. The authority of the person ordering them to leave the S. H. Kress Company store does not involve such a judgment. It cannot be contended that petitioners should be entitled to spar with the person in possession requiring proof of authority to their satisfaction. Could they require a landowner to produce his deed, or a lessee his lease? Can they argue with him over the extent of his implied authority and all the nice technicalities of the law of agency? We submit that the authority of the person in possession is apparent from his direction to another to leave the premises, that he cannot be required to prove his authority to the satisfaction of the trespasser there or anywhere, except in a court when he is tried for the trespass. The petitioners never questioned the authority of the manager and his authority having been proved in court beyond a reasonable doubt, they should not now be heard to complain.

CONCLUSION

For the foregoing reasons the respondent submits that Section 16-388 of the Code of Laws of South Carolina, 1952, as applied to the petitioners, presents no question whatever in conflict with the Fourteenth and First Amendments to the Constitution of the United States, or the decisions of this Court, and that the petition for Writ of Certiorari in this case should be denied.

Respectfully submitted,

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